

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE HOTEL EMPLOYEES AND RESTAURANT)
EMPLOYEES INTERNATIONAL UNION WELFARE)
FUND, *et al.*,)
Plaintiffs,) CIVIL ACTION
vs.) NO. 08 C 6482
PGA MORTGAGE SERVICES, INC.,)
a Florida corporation,) JUDGE DAVID H. COAR
Defendant.)

MOTION FOR ENTRY OF DEFAULT AND JUDGMENT

NOW COME Plaintiffs, by their attorneys, and move for entry of judgment by default against Defendant, PGA MORTGAGE SERVICES, INC., a Florida corporation. In support of that Motion, Plaintiffs state:

1. On February 5, 2009, the Summons and Complaint was served on the Registered Agent (by tendering a copy of said documents to his spouse, Gale B. Perry) at his residence (a copy of the Summons and Affidavit of Service is attached hereto). Therefore, Defendant's answer was due on February 25, 2009. As Defendant has failed to timely answer the Complaint, Plaintiffs respectfully request entry of default and judgment pursuant to F.R.Civ.P. Rule 55.

2. For the period of June 2007 through February 2008, Defendant reported contributions and deductions due to the Welfare Fund on behalf of Melvyn S. Perry, but has not paid any amounts reported as due for the period November 2007 through February 2008. Since at least August 2007, Defendant has not reported contributions due on behalf of any employees other than Perry. Perry is an officer of Defendant, PGA Mortgage Services, Inc. (See, Affidavit of Dean Dailey).

3. Under the terms of the Trust Agreement, Defendant may only report and pay contributions on behalf of Perry, as an officer, director and/or owner of Defendant if: (1) Perry actually performs work covered by the collective bargaining agreement, and (2) Defendant reports and pays contributions and deductions on behalf of other employees covered by the collective bargaining agreement (Dailey Aff. Par. 6).

4. In addition, under the Trust Agreement, if the Welfare Fund extends benefits to an employee in reliance on the employer's reports, and that employee is later determined to be ineligible to receive benefits, that employer shall be liable to reimburse the Welfare Fund for the cost of the benefits paid, plus interest at the rate of prime plus 2% from the date the payments were made by the Welfare Fund until payment is received from the employer (Dailey Aff. Par. 7).

5. The Welfare Fund, acting in good faith, has mistakenly paid benefits on behalf of Perry and/or his dependents totaling \$14,042.19 for the period of August 2007 through the present, based on the monthly contribution reports prepared and submitted by Defendant. For the period of August 2007 through December 2007, Defendant paid \$2,645.00 in contributions on behalf of Perry. The amount due the Welfare Fund is comprised of the mistakenly paid benefits of \$14,042.19, plus interest at the rate of prime plus 2% from the date the payments were made by the Welfare Fund of \$810.58, less the contributions of \$2,645.00. Thus, the total due to the Plaintiff Welfare Fund is \$12,207.77 (Dailey Aff. Par. 8).

6. In addition, Plaintiffs' firm has expended \$473.08 in costs and \$2,563.75 in attorneys' fees in this matter. (See, Affidavit of Laura M. Finnegan).

7. Based upon the documents attached hereto, Plaintiffs request entry of judgment in the total amount of \$15,244.60.

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment in the amount of \$15,244.60.

/s/ Laura M. Finnegan

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that she electronically filed the foregoing document (Motion for Entry of Default and Judgment) with the Clerk of Court using the CM/ECF system, and further certifies that I have mailed the above-referenced document by United States Mail to the following non-CM/ECF participant on or before the hour of 5:00 p.m. this 6th day of April 2009:

Mr. Melvyn S. Perry, Registered Agent
PGA Mortgage Services, Inc.
3101 Boardwalk
Tower 1, #2208
Atlantic City, NJ 08401

/s/ Laura M. Finnegan

Laura M. Finnegan
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